

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 9, 2018 appellant, then a 56-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a neck sprain as a result of a motor vehicle accident while in the performance of duty. She stopped work on the date of injury. OWCP initially accepted the claim for neck strain. It later expanded its acceptance of the claim to include strain of muscle, fascia, and tendon at neck level, left thumb carpometacarpal phalangeal joint sprain, left wrist sprain, strain of the long flexor muscle, fascia and tendon of the left thumb at wrist and hand level, and left-hand synovitis and tenosynovitis. OWCP paid appellant wage loss on the supplemental rolls from November 10, 2018 until May 28, 2019.³

By decision dated May 7, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the medical evidence rested with Dr. Theodore J. Suchy, an osteopath and Board-certified orthopedic surgeon, who opined in an August 12, 2019 medical report, that she no longer had residuals or disability causally related to her accepted September 9, 2018 employment injury.

On May 14, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a March 31, 2019 cervical spine magnetic resonance imaging (MRI) scan report from Dr. Robert A. Breit, a Board-certified neuroradiologist. Dr. Breit provided impressions of stable appearance of the cervical spondylosis without a focal disc herniation; mild-to-moderate right-sided lateral recess and foraminal stenosis at C5-6, and mild-to-moderate central spinal stenosis at C6-7.

During a telephonic hearing held on August 13, 2020 appellant noted her physical limitations due to her accepted employment injury and related that she was unhappy with Dr. Suchy's examination.

An OWCP hearing representative, in an October 28, 2020 decision, affirmed the May 7, 2020 termination decision based on Dr. Suchy's second opinion report.

Appellant resubmitted Dr. Breit's March 31, 2019 MRI scan report.

On July 13, 2021 appellant, through counsel, requested reconsideration regarding the October 28, 2020 decision. She submitted an April 29, 2019 letter in which she disagreed with the findings of Dr. Suchy's August 12, 2019 report and contended that neither Dr. Suchy nor his assistant performed a thorough examination. Appellant asserted that she continued to suffer from

³ A June 18, 2019 Notice of Personnel Action (PS Form 50) indicated that appellant separated from the employing establishment, effective June 7, 2019, for disqualification conditions during a probationary period.

residuals and disability due to her September 9, 2018 employment injury and she also sustained post-traumatic stress disorder (PTSD) as a consequence of her accepted work injury.

OWCP, by decision dated October 19, 2021, denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant's request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that she did not advance a relevant legal argument not previously considered by OWCP. On reconsideration

⁴ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

appellant noted deficiencies in Dr. Suchy's August 12, 2019 second opinion report and contended that she continued to suffer from employment-related residuals and disability and developed PTSD as a result of the accepted work injury. However, her own opinion on the cause of her continuing residuals and disability and consequential emotional condition is not relevant to the underlying issue in this case, *i.e.*, whether OWCP properly terminated her compensation benefits, effective May 7, 2020, as she no longer had continuing residuals and disability causally related to the September 9, 2018 employment injury. This is a medical issue which must be addressed by relevant medical evidence.⁹ The Board has held that the submission of argument or evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP in support of her reconsideration request under 20 C.F.R. § 10.606(b)(3). As noted, OWCP previously terminated her wage-loss compensation and medical benefits, effective May 7, 2020, as she no longer had continuing employment-related residuals or disability. In support of her reconsideration request, appellant resubmitted Dr. Breit's March 31, 2019 MRI scan report. The Board has held that evidence that repeats or duplicates evidence already in the case record, has no evidentiary value, and does not constitute a basis for reopening a case.¹¹ As appellant did not provide relevant and pertinent evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹²

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

⁹ See *A.P.*, Docket No. 20-0089 (issued June 17, 2020); *A.M.*, Docket No. 18-1033 (issued January 8, 2019); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁰ *A.M.*, *id.*; *A.D.*, *id.*; *Bobbie F. Cowart*, *id.*; *Edward Matthew Diekemper*, *id.*

¹¹ *R.G.*, Docket No. 21-0098 (issued May 19, 2021); *J.V.*, Docket No. 19-0990 (issued August 26, 2020); *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393 (1984).

¹² See *S.V.*, Docket No. 20-1309 (issued December 22, 2020); *C.C.*, Docket No. 20-0950 (issued October 29, 2020).

¹³ *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board